

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOPHEAY TON,

Plaintiff,

vs.

WELLS FARGO BANK, NA; WELLS
FARGO HOME MORTGAGE,

Defendant.

CASE NO. 09cv2276 JM(POR)

ORDER GRANTING MOTION TO
DISMISS

Wells Fargo Bank, N.A. individually and dba Wells Fargo Home Mortgage (collectively “Wells Fargo”), moves to dismiss Plaintiff Sopheay Ton’s action for failure to prosecute or comply with court order. Plaintiff did not file a response to the motion. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument.

On December 10, 2009 the court entered an order granting Wells Fargo’s Rule 12(b)(6) motion to dismiss for failure to state a claim and granting Plaintiff 30 days leave to amend (“Order”). (Docket No. 10). Plaintiff has not responded to any of the motions filed by Wells Fargo nor did he file an amended complaint. “For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.” Fed.R.Civ.P. 41(b). In order to avoid dismissal, Rule 41(b) requires that federal actions be prosecuted with reasonable diligence. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976).

Here, the court concludes that Plaintiff’s failure to respond to the motions filed by Wells Fargo or to file an amended complaint as set forth in this court’s earlier Order demonstrates a lack of

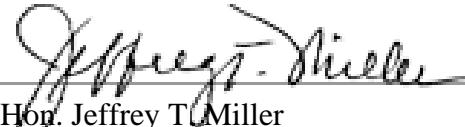
1 reasonable diligence to prosecute this action. Accordingly, the court grants the motion to dismiss for
2 failure to prosecute with prejudice.

3 In sum, the motion to dismiss for failure to prosecute is granted with prejudice. The Clerk of
4 Court is instructed to close the file.

5 **IT IS SO ORDERED.**

6 DATED: March 4, 2010

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Hon. Jeffrey T. Miller
United States District Judge